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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,266	11/14/2003	Richard Bruce Brandon	00704.8022.US00	7950
61263	7590	09/07/2010		
PROSKAUER ROSE LLP One International Place Boston, MA 02110			EXAMINER SMITH, CAROLYN L	
			ART UNIT 1631	PAPER NUMBER
			MAIL DATE 09/07/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/712,266

Applicant(s)

BRANDON ET AL.

Examiner

Carolyn Smith

Art Unit

1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 101 rejection.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 71-78,80-93,95 and 147.
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: the 35 USC 102 rejection is maintained.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

8/30/10

/Carolyn Smith/
Primary Examiner, Art Unit 1631

35 USC 102 rejection

Applicant summarizes the claimed invention and the Hamilton et al. reference. Applicant argues that Hamilton et al. focus on integrating disparate data from the result of multiple different tests and not a single test. This statement is found unpersuasive as Hamilton et al. note that a health profile of data obtained from an individual may be data composed of a single indicator (0080) and using at least one biological sample (i.e. includes just one) from an individual (0081-0082) as well as a signature profile consisting of one type of data (i.e. gene expression data) (0085). While Hamilton et al. mention integrating disparate data, as stated by Applicant, Hamilton et al. also mention the possibility of using a single test, as noted above. Applicant argues that Hamilton et al. do not allow a status of an individual to be determined, but rather allow an expert user to more easily handle disparate data. This statement is found unpersuasive as Hamilton et al. note that a health or wellness profile of data obtained from an individual may be data composed of a single indicator (0080) and using at least one biological sample (i.e. includes just one) from an individual (0081-0082) as well as a signature profile consisting of one type of data (i.e. gene expression data) (0085). It is noted that a health or wellness profile reasonably represents determining a subject's status. Applicant reiterates arguments about Hamilton et al. reciting disparate data instead of a single test which have already been found unpersuasive as stated above. Applicant argues that any determination by Hamilton et al. is not performed remotely in a base station and doesn't describe how the signature profiles are used for diagnosis. This statement is found unpersuasive as Hamilton et al. disclose in a base station receiving subject data from the end station via the communications network (0022, Figure 5, 0100-0109, 0113, 0141), comparing the subject data to predetermined data (i.e. reference data) and determining the status of the subject indicating the presence, absence or degree of one or more conditions (0017, 0072-0075, 0080-0081, 0133), and transferring the status indication to the end station (0022, Figure 5, 0100-0121, 0113, 0147). It is noted that a wellness or health profile as described early determines a status and analysis of data leads to disease association (i.e. Figure 3) while Figure 5, user interfaces (0022), server (0103) and LIMS frameworks with sending and receiving sides (0113) and different research groups generating and analyzing data (0100) illustrates remoteness and different stations, as the term is broadly and reasonably interpreted. Applicant argues Hamilton et al. do not compare subject data to values of at least some parameters and condition indication. This statement is found unpersuasive as Hamilton et al. disclose comparisons to references throughout the specification involving a plurality of conditions such as comparing subject data to reference data and determining the status of the subject indicating the presence, absence or degree of one or more conditions (0017, 0060, 0072-0075, 0080-0081, 0133). Applicant discusses paragraphs 0013, 0018, 0022, 0097-0109 of Hamilton et al. and reiterates arguments about them not disclosing a method of determining the status of a subject or an end station and base station via a communications network that has already been found unpersuasive above. Applicant summarizes paragraphs 0013-0017 and 0054-0071 are reiterates arguments about obtaining subject data from only a single test which has already been found unpersuasive above. Applicant summarizes paragraphs 0022, 0100-0109, 0113, and 0141, and Figure 5 and argues Hamilton et al. do not disclose the end station to base station limitations which has already been found unpersuasive above. Applicant summarizes paragraphs 0017, 0072-0078, 0080-0081 and 0133 and argues they do not disclose comparing and determining steps to be performed in a base station which has already been found unpersuasive above. For instance, 0017 used a computer method and system in which data is compared to a reference and establishes a signature profile indicating the status of an individual. Applicant summarizes paragraphs 0013-0017, 0054-0071, 0080 and 0087 and argues Hamilton et al. do not disclose using a single test to obtain subject data which has already been found unpersuasive as described above. Applicant's arguments are deemed unpersuasive for the reasons given above.